



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2004

Mr. Michael Wied
Staff Attorney
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2004-8049

Dear Mr. Wied:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 209820.

The Texas Water Development Board (the "board") received a request for information related to the board's loan to the Wellborn Special Utility District ("Wellborn"), including but not limited to the loan application, loan and transcript. We understand you to claim that the submitted archeological survey may be excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted the loan application, loan and transcript to this office. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 191.004 of the Natural Resources Code provides:

(a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

(b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004(a), (b), (c). The submitted information indicates that the board conducted the archeological survey on the Wellborn site under the authority of Texas Antiquities Permit No. 2309, and that the final submitted survey was issued at the conclusion of the archeological work. Upon careful review of the final survey, we find that it qualifies as “information specifying details of a survey to locate state archeological landmarks” for the purposes of section 191.004. Therefore, we conclude that the board may withhold the submitted survey under section 191.004(b) of the Natural Resources Code in conjunction with section 552.101 of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹ Because our ruling is dispositive, we need not address your remaining claimed exception.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 209820

Enc. Submitted documents

c: Mr. Bill Dugat
816 Congress Avenue, Suite 1700
Austin, Texas 78701
(w/o enclosures)